IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15498 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTIBHAI DHANJIBHAI SURTI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15498 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS HB PUNANI, LD. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 29/12/2004

ORAL JUDGMENT

Heard Ms.Subhadra Patel, learned counsel appearing for the petitioner and Ms.H.B. Punani, ld.AGP, appearing on behalf of the respondents.

2. The present petition is filed under Article 226 r/w. Articles 21 and 22(5) of the Constitution of India. The petitioner has challenged legality and validity of the order of detention dated 21st June, 2004, passed by the respondent no.2-Commissioner of Police, Surat City, under the purported exercise of powers vested with the

Detaining Authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act').

3. The petitioner is branded as a "bootlegger" within the meaning of Section 2(b) of the Act, as he was found involved in an offence registered under the Bombay Prohibition Act. While exercising powers under Section 3(2) of the Act, the Detaining Authority has detained the petitioner branding the petitioner as a "bootlegger" mainly on the fact that he was found involved in an offence punishable under the Bombay Prohibition Act registered on 12th May, 2004, with Rander Police Station vide C.R. No.III-455 of 2004. The Detaining Authority has also taken into consideration the facts stated by the two witnesses whose statements have been recorded by the sponsoring authority on 16th May, 2004.

4. The order of detention is assailed by the present petitioner on various grounds mentioned in the memo of the petition. However, Ms.Patel has focused her arguments mainly on two grounds. According to her, the ratio of the decision in the case of Sohanlal Surjaram Visnoi v. State of Gujarat and ors., reported in 2004(2) GLR 1051, would squarely apply to the present case because the present order of detention is passed on registration of a solitary offence. It is not necessary to quote the observations of this Court in the cited decision. The Court has considered the ratio of the Apex Court holding that such an event cannot be said to be prejudicial to the maintenance of public order; but it can be said to be a wrong relating to maintenance of law and order.

5. There is some force in the second point raised by Ms.Patel that the order of detention is passed after lapse of about more than one month. For this purpose, the date of registration of last offence should be considered as relevant. Even the sponsoring authority had not cared to take any of the witnesses before the Detaining Authority for verification of the statements till 16th June, 2004. The sponsoring authority itself took about more than one month in getting the statements verified. This unexplained delay caused in getting the statements verified and placing them before the authority has resulted into gross delay. In support of this submission, Ms.Patel has placed reliance on the decision of this Court (Coram : J.R. Vora, J) dated 26th August, 2003, in Special Civil Application No.10182 of 2003 in the case of Maksud Yasin Kayamkhyani v. State of Gujarat. I would like to quote relevant observations of this Court (para:6), which are as under :

"6. If the facts of this case is perused and factual data is examined, it is clear that if the case is examined from the crime wise, the activities of the detenu came to light right from 25.4.2002, the dates on which the crimes allegedly committed by the detenu, registered or unreported, necessarily denotes time gap not only in respect of repeating dangerous behaviour by the detenu but that gap is apparent on the part of the authority to discover such dangerous behaviour of the detenu. An offence came to be registered i.e. third one on 17.7.2002, unreported incident as narrated by the witness occurred on 22.9.2003, again a crime for theft came to be registered against the detenu on 24.9.2002 and again on 10.10.2002 if the incident as narrated by the second witness occurred, then unexplained delay on the part of the authority crystally emerges in discovering the dangerous behaviour of the detenu because the statements of the witnesses came to be recorded on 24.10.2002 and 28.10.2002. Again, the statements came to be verified only on 26.11.2002 by the detaining authority and the order came to be passed on 29.11.2002. The detenu has raised the plea that there is an unexplained delay in passing the order, as aforesaid. There is ample substance in the said plea. It is found that the credible chain including ground of criminal and dangerous activity of the detenu and the purpose of detention is snapped by a long gap of more than one month in absence of the detention order. The facts of the case are also covered by decision of this Court in the matter of THAKORE GIRISHJI 2 GIDHAJI JENAJI vs. DISTRICT MAGISTRATE & ORS., reported in 2002(1) GCD 338 and in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381, the detention order therefore cannot be sustained and deserves to be quashed on this ground alone."

6. So on the above grounds, the Court is accepting the say of the petitioner that the authority has committed grave error in recording subjective satisfaction that the activities of the petitioner are prejudicial to the maintenance of public order. Obviously, therefore, it was erroneous to exercise privilege vested with the authority under the Act. So

without entering into the merits of other grounds, the order of detention is required to be quashed and set aside.

7. In view of the above, the present petition is hereby allowed. The order of detention dated 21st June, 2004, passed by the respondent no.2 herein is hereby quashed and set aside and the petitioner-detenu is hereby ordered to be set at liberty forthwith, if no longer required for any other case. Rule is made absolute with no order as to costs. Direct Service is permitted.

(C.K. Buch, J)

Aakar